

|   |                        |  |             |   |   |                    |             |
|---|------------------------|--|-------------|---|---|--------------------|-------------|
| <b>000131</b>   |                        | <b>REQUEST FOR COUNCIL ACTION</b><br>CITY OF SAN DIEGO   |             |   | 1. CERTIFICATE NUMBER<br>(FOR AUDITOR'S USE ONLY)<br><b>N/A</b>       |                    |             |
| TO: CITY ATTORNEY   |                        | 2. FROM (ORIGINATING DEPARTMENT):<br>ENGINEERING & CAPITAL PROJECTS                              |             |   | 3. DATE: May 13, 2008 <span style="float: right;">51<br/>07/15</span> |                    |             |
| 4. SUBJECT:<br>EXTENSION OF A COOPERATIVE AGREEMENT WITH CALTRANS FOR IMPROVEMENTS ALONG SR-15 IN MID-CITY  |                        |  |             |   |   |                    |             |
| 5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.)<br>Deborah Van Wanseele, 533-3012, MS 608   |                        | 6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.)<br>Siavash Pazargadi, 533-3757, MS 609 <i>JP</i> |             | 7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED <input type="checkbox"/>  |   |                    |             |
| <b>8. COMPLETE FOR ACCOUNTING PURPOSES</b>  |                        |  |             |   |   |                    |             |
| FUND  |                        |  |             | 9. ADDITIONAL INFORMATION / ESTIMATED COST:   |   |                    |             |
| DEPT.   |                        |  |             | None  |   |                    |             |
| ORGANIZATION  |                        |  |             |   |   |                    |             |
| OBJECT ACCOUNT  |                        |  |             |   |   |                    |             |
| JOB ORDER   |                        |  |             |   |   |                    |             |
| C.I.P. NUMBER   |                        |  |             |   |   |                    |             |
| AMOUNT  |                        |  |             |   |   |                    |             |
| <b>10. ROUTING AND APPROVALS</b>  |                        |  |             |   |   |                    |             |
| ROUTE (#)   | APPROVING AUTHORITY    | APPROVAL SIGNATURE   | DATE SIGNED | ROUTE (#)   | APPROVING AUTHORITY   | APPROVAL SIGNATURE | DATE SIGNED |
| 1   | DEPT DIRECTOR          | <i>[Signature]</i>   | 5/27/08     | 7   | DEPUTY CHIEF  | <i>[Signature]</i> | 6/19/08     |
| 2   | EAS                    | <i>[Signature]</i>   | 6/3/08      | 8   | COO   | <i>[Signature]</i> | 6/23/08     |
| 3   | EOCP- EXEMPT           | <i>[Signature]</i>   | 6/10/08     | 9   | CITY ATTORNEY   | <i>[Signature]</i> | 6/24/08     |
| 4   | COUNCIL LIAISON OFFICE | <i>[Signature]</i>   | 6/13/08     | 10  | ORIG. DEPT  | <i>[Signature]</i> | 6/24/08     |
| 5   | FINANCIAL MANAGEMENT   | <i>[Signature]</i>   | 6/18/08     | DOCKET COORD: <i>[Signature]</i> COUNCIL LIAISON <i>[Signature]</i> 7/3/08  |   |                    |             |
| 6   | AUDITOR                | <i>[Signature]</i>   | 6/18/08     | COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION<br><input type="checkbox"/> REFER TO: _____ COUNCIL DATE: 7/15/08 |   |                    |             |
| 11. PREPARATION OF: <input type="checkbox"/> RESOLUTIONS <input checked="" type="checkbox"/> ORDINANCE(S) <input type="checkbox"/> AGREEMENT(S) <input type="checkbox"/> DEED(S)  |                        |  |             |   |   |                    |             |
| Authorizing the Mayor to execute an amendment to a Cooperative Agreement with Caltrans for improvements along State Route 15 in Mid-City, extending the termination date of the Agreement by one year to June 30, 2009.   |                        |  |             |   |   |                    |             |
| 11A. STAFF RECOMMENDATIONS:<br>Approve the ordinance  |                        |  |             |   |   |                    |             |
| 12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)   |                        |  |             |   |   |                    |             |
| COUNCIL DISTRICT(S): 3  |                        |  |             |   |   |                    |             |
| COMMUNITY AREA(S): Mid-City   |                        |  |             |   |   |                    |             |
| ENVIRONMENTAL IMPACT: This activity is exempt from CEQA pursuant to State CEQA Guidelines, Section 15060(c)(3). This determination is predicated on Section 15004(b)(2)(A) of the Guidelines, which provides direction to lead agencies on the appropriate timing for environmental review. Any construction related to this action will require further review under the provisions of CEQA. |                        |  |             |   |   |                    |             |
| HOUSING IMPACT: N/A   |                        |  |             |   |   |                    |             |
| OTHER ISSUES: 6 votes are required for passage  |                        |  |             |   |   |                    |             |

## EXECUTIVE SUMMARY SHEET

DATE ISSUED: May 13, 2008 REPORT NO.: n/a (1472)  
ATTENTION: Council President and City Council  
ORIGINATING DEPARTMENT: Engineering and Capital Projects  
SUBJECT: Extension of a Cooperative Agreement with Caltrans for Improvements to SR-15 in Mid-City  
COUNCIL DISTRICT(S): 3  
CONTACT/PHONE NUMBERS: Deborah Van Wanseele, 619 533 3012  
Siavash Pazargadi, 619 533 3757

REQUESTED ACTION:

Council authorization for the Mayor to execute an amendment to a Cooperative Agreement with Caltrans for improvements to State Route 15 in Mid-City, extending the termination date of the Agreement by one year to June 30, 2009.

STAFF RECOMMENDATION:

Staff recommends Council approval of the ordinance.

EXECUTIVE SUMMARY:

On February 9, 2004, the City and Caltrans entered into an Agreement to provide bicycle/pedestrian improvements along State Route 15 in Mid-City from Park de la Cruz to Mission Valley. One portion of the project was a bike path along SR-15 from Adams Avenue to Camino del Rio South. The second portion of the project was a shared bicycle/pedestrian path along the east side of SR-15 from Adams Avenue to Landis Street. Because the bike path from Adams Avenue to Mission Valley was the largest and most complex part of the project, it was the focus of the majority of the planning and preliminary design work. However, the possible expansion of SR-15 created funding and right-of-way issues, and the path from Adams Avenue to Mission Valley has been postponed until these issues can be resolved.

Therefore, the original project scope has subsequently been modified to include only the portion of the project between Adams Avenue and Landis Street. City Engineering staff is currently designing the revised project (State Route 15 Bikeway, CIP 58-127.0), which includes signage and striping, landscaping, and three bicycle/pedestrian connections between cul-de-sacs. Design will be complete this summer, with construction anticipated to begin in December 2008.

The original termination date for the Agreement was June 30, 2006.

On May 17, 2006, by Mayoral Action, the City and Caltrans entered into an Agreement to extend the termination date to June 30, 2008. This action was necessary because of the complexity of the Mission Valley connection.

Caltrans is requesting that the termination date be extended one year to June 30, 2009, to allow for completion of the remaining portion of the project.

According to the City Attorney, because this action will extend the Agreement beyond five years' duration, Council approval via ordinance is required.

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FISCAL CONSIDERATIONS:

None with this action

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

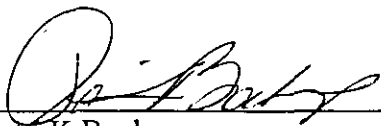
Council approved the SR-15 Improvements agreement on February 9, 2004.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

There was extensive community participation during the planning and design phases of State Route 15 through Mid-City.

KEY STAKEHOLDERS & PROJECTED IMPACTS:

Caltrans, residents of the Mid-City community, and bicyclists and pedestrians along the SR-15 corridor are the key stakeholders in this action.



Patti K Boekamp  
Director,  
Engineering & Capital Projects



David Jarrell  
Deputy Chief of Public Works

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AUTHORIZING AN EXTENSION OF A  
COOPERATIVE AGREEMENT WITH CALTRANS FOR  
IMPROVEMENTS ALONG STATE ROUTE 15.

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Mayor is authorized to execute an amendment to a Cooperative Agreement with Caltrans for improvements along State Route 15 in Mid-City, extending the termination of the Agreement by one year to June 30, 2009, under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document No.

OO-\_\_\_\_\_.

Section 2. That this activity is exempt from California Environmental Quality Act [CEQA] pursuant to State CEQA Guidelines Section 15060(c)(3).

Section 3. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Michael P. Calabrese  
Chief Deputy City Attorney

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MPC:sc  
06/20/08  
Aud.Cert.: N/A  
Or.Dept:E&CP  
O-2008-167

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

SD-15  
KP 7.1-7.7  
EA: 11-257400  
Agreement No. 11-4310/A2  
PPNO 0681  
**I – 15 Pedestrian / Bike  
Facilities and Landscaping**  
Funding Source: SHOPP TEA

**AMENDMENT NO. 2 TO AGREEMENT**

THIS AMENDMENT NO. 2 TO AGREEMENT, ENTERED INTO EFFECTIVE ON \_\_\_\_\_, 2008, is between the **STATE OF CALIFORNIA**, acting by and through its **Department of Transportation**, referred to herein as “**STATE**”, and the

**CITY OF SAN DIEGO**, a municipal corporation of the State of California, referred to herein as “**CITY**”

**RECITALS**

1. The parties hereto entered into an Agreement (Document No. 015790, District Agreement No. 11-4310) on February 9, 2004, said Agreement defining the terms and conditions of a project to perform preliminary engineering, prepare Plans, Specifications and Estimate, advertise, award and administer the construction of the I-15 Pedestrian / Bike Facilities and Landscaping in the City of San Diego, referred to herein as "PROJECT".
2. The parties also entered into an Amendment No. 1 to Agreement (Document Number 015790, District Agreement No. 11-4310/A1) on May 17, 2006 to extend the termination date of the original Agreement from June 30, 2006, to June 30, 2008
3. It has now been determined that PROJECT will not be constructed prior to the termination date of said Agreement as already extended.

**IT IS THEREFORE MUTUALLY AGREED:**

1. The termination date specified in Article 20 of Section III of the original Agreement as previously amended shall now be June 30, 2009 instead of June 30, 2008.
2. All other terms and conditions of said Agreement (Document No. 015790) as previously amended shall remain in full force and effect.

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3. This Amendment to Agreement is hereby deemed to be part of Document No. 015790 (District Agreement No. 11-4310).

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

CITY OF SAN DIEGO


William Kempton  
Director of Transportation

By \_\_\_\_\_  
Ross Cather  
Deputy District Director

By \_\_\_\_\_  
Mayor/Designee

Approved as to Form and Procedure:

Approved as to Form:

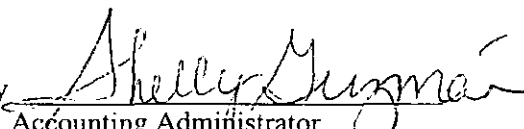
  
\_\_\_\_\_  
Attorney  
Department of Transportation

\_\_\_\_\_  
City Attorney

Certified as to Funds

By \_\_\_\_\_  
District Budget Manager/BK

Certified as to Procedure

By   
\_\_\_\_\_  
Accounting Administrator  
Reimbursements Section

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## Memorandum

To: HEADQUARTERS  
Mark Robinson  
Office of Cooperative Agreements

Date: March 14, 2008

File:

Agreement No. 11-4310 A2

Attn: Loretta M. Gunter, MS 28  
State Cooperative Agreement Coordinator

From: DEPARTMENT OF TRANSPORTATION  
DISTRICT 11

Subject: Cooperative Agreement No. 11-4310 A2

Attached is forwarded for Accounting and Legal signatures.

The Agreement is in conformance with Headquarter's OCA (Julie Forsythe) approval of 3/14/08.

Please return all copies to District Coordinator, Elmo Landingin for further processing.

Elmo Landingin  
Cooperative Agreements



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COPY

11-SD-15  
KP 7.1/7.7  
EA: 11-257408  
Agreement No. 11-4310/A1  
PPNO 0681  
**I - 15 Pedestrian / Bike  
Facilities and Landscaping**  
Funding Source: SHOPP TEA

**AMENDMENT NO. 1 TO AGREEMENT**

This AMENDMENT NO.1 TO AGREEMENT entered into effective on MAY 17 2006, 2006, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE", and the

CITY OF SAN DIEGO, a municipal corporation of the State of California, referred to herein as "CITY".

RECITALS

1. The parties hereto entered into an Agreement (District Agreement No. 11-4310) on February 9, 2004, said Agreement defining the terms and conditions of a project to perform preliminary engineering, advertise, award and administer the construction of the I-15 Pedestrian / Bike Facilities and Landscaping in the City of San Diego, referred to herein as "PROJECT".
2. It has been determined that PROJECT will not be constructed prior to the termination date of said Agreement.

IT IS THEREFORE MUTUALLY AGREED:

1. The termination date specified in Section III, Article <sup>20</sup>~~15~~ of the original Agreement shall now be June 30, 2008, instead of June 30, 2006.
2. All other terms and conditions of said Agreement Document No. 015790 shall remain in full force and effect.

DOCUMENT NO. C-13792  
MAY 22 2006

FILED  
OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

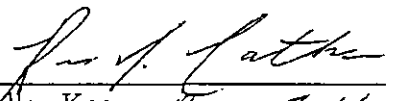
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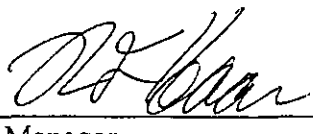
3. This Amendment to Agreement is hereby deemed to be a part of District Agreement No. 11-4310.

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

CITY OF SAN DIEGO

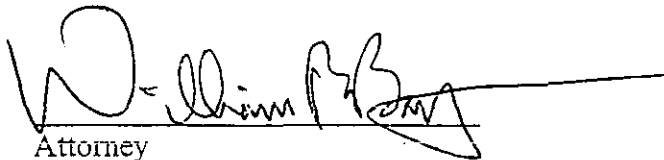
William Kempton  
Director of Transportation

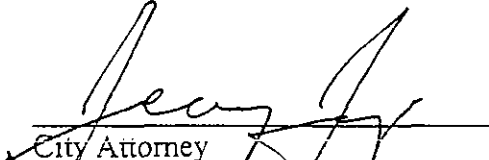
By:   
~~Allan Kosup~~ Ross Cather  
Deputy District Director

By:   
for City Manager

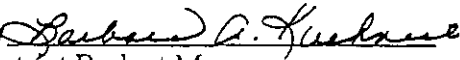
Approved as to Form and Procedure:

Approved as to Form:

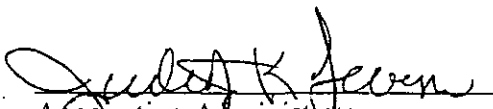
  
Attorney  
Department of Transportation

  
City Attorney

Certified as to Funds

By:   
for District Budget Manager

Certified as to Procedure

  
Accounting Administrator

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SD-15  
KP 7.1-7.7  
EA: 11-257400  
Agreement No. 11-4310  
PPNO 0681  
I - 15 Pedestrian / bike  
facilities and  
landscaping

### CONTRIBUTION AGREEMENT

This AGREEMENT entered into effective on FEB 09 2004, 2003, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE", and the

CITY OF SAN DIEGO, a municipal corporation of the State of California, referred to herein as "CITY".

### RECITALS

1. Pursuant to Section 14526.5 of the Government Code, STATE has an approved State Highway Operation and Protection Program (SHOPP) for the expenditure of transportation funds for major capital improvements. Included in this SHOPP is the Transportation Enhancement Activities (TEA-21) Program.
2. CITY desires highway improvements consisting of pedestrian/bike facilities and landscaping on CITY's right of way to enhance the I-15 corridor through mid-city in the City of San Diego, referred to herein as PROJECT. PROJECTS' Transportation Enhancement Activities (TEA-21) application is shown as Attachment A.
3. TEA is a Federal reimbursable program. The work covered by this Agreement must be eligible under Federal and State regulations and must be completed and invoiced for before reimbursement will be made.
4. CITY desires to perform preliminary engineering (including final environmental and construction documents), advertise, award and administer the construction contract for PROJECT.

DOCUMENT NO. RR-298852

FILED FEB 09 2004

OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

5. STATE desires to provide SHOPP TEA funds up to 88.53% of eligible PROJECT costs, but not to exceed \$1,200,000 from the STATE managed (TEA 21) funds, so that CITY may proceed with Preliminary Engineering and Construction of PROJECT. The CITY will bear the remainder of PROJECT costs as set forth herein in Section III, Article 3 and Attachment A and Exhibit C, attached to and made a part of this Agreement.
6. The parties hereto intend to define herein the terms and conditions under which PROJECT is to be constructed, financed, and maintained.

### SECTION I

#### CITY AGREES:

1. To perform all preliminary engineering and environmental documentation (PA&ED) and certification (both CEQA and NEPA,), preparation of detailed plans, specifications and estimate (PS&E), utility identification and location, and documentation necessary to advertise and award the construction contract for PROJECT. The final plans and specifications for PROJECT, shall be signed by an appropriate licensed and registered professional in the applicable field in the state of California.
2. To advertise, award, and administer the construction contract for PROJECT in accordance with applicable STATE's Construction Manual, Local Assistance Manual, and Encroachment Permit for Construction of Project. Approval of STATE's financial participation by the California Transportation Commission and the Federal Highway Administration (FHWA) shall be assured prior to advertising.
3. To request allocation of \$1,200,000 in SHOPP TEA funds from the California Transportation Commission (CTC) upon execution of this agreement, and to request authorization of federal funds (E-76) prior to advertisement of a construction contract for PROJECT. All costs to STATE to fulfill its oversight responsibilities for PROJECT as described in Article 5 of Section II of this Agreement will be charged to funds allocated for PROJECT. STATE will retain \$50,000 from funds allocated to CITY to cover said costs for oversight activities.
4. To advertise, award, and administer the construction contract for PROJECT in accordance with requirements of the State Contract Act, the California Labor Code, including its prevailing wage provisions, and the encroachment permit. Workers employed in the performance of work contracted for by the CITY, and/or performed under encroachment permit, are covered by provisions of the Labor Code in the same manner as are workers employed by STATE's Contractors. CITY shall obtain applicable wage rates from the State Department of Industrial Relations and shall adhere to the applicable provisions of the State Labor Code. Violations shall be

reported to the State Department of Industrial Relations. The contract shall also include the Federal DBE requirements as contained in the Title 49 of CFR, Part 23.

5. To pay 100% of all actual costs of PROJECT, (capital and support costs), including supplemental work, change orders, contract claims paid to the construction contractor, and cost of CITY's defense of all PROJECT related claims, above the \$1,200,000 in SHOPP TEA funds being provided by STATE, required for satisfactory completion of PROJECT. Estimated costs of PROJECT are shown on Section III-3 and attachment A and Exhibit C attached to and made a part of this Agreement.
6. To submit plans at or about 60%, 90% and 100% of plan completion for review of eligible TEA reimbursable costs.
7. To submit invoices to STATE on a regular basis, not to exceed once per month, for reimbursement of eligible PROJECT expenses incurred by CITY and to submit a final report of expenditures to STATE within 120 days after completion and acceptance of the PROJECT construction contract by CITY. Invoices shall be submitted on agency letterhead in the format required in Chapter 5, Accounting/Invoices, of the Local Assistance Procedures Manual.
8. If any portion of the work is within the existing State highway right of way, to apply for necessary encroachment permits in accordance with STATE's standard permit procedures, as more specifically defined in Articles 5, 6, and 7 of Section III of this Agreement. CITY is responsible for obtaining permits for contractors and consultants for all aspects of PROJECT.
9. To retain or cause to be retained for audit by STATE or other government auditors for a period of three (3) years from date of FHWA payment of final voucher, or four (4) years from date of final payment under the contract, whichever is longer, all records and accounts relating to construction of PROJECT.
10. If cultural, archaeological, paleontological or other protected materials are encountered during the construction of PROJECT, CITY shall stop work in that area until a qualified professional can evaluate the nature and significance of the find and a plan is approved for the removal or protection of that material.
11. CITY shall require any utility owner and/or its contractor performing the protection or relocation work within the State highway right of way to obtain an encroachment permit from STATE prior to the performance of said work.
12. To comply with STATE National Pollution Discharge Elimination System requirements.
13. That, upon completion of PROJECT and all work incidental thereto, to furnish STATE with a detailed statement of the total construction and construction

engineering costs to be reimbursed by STATE, including resolution of any construction related claims which have been allowed to the construction contractor.

14. To provide STATE a segregated estimate showing eligible TEA portions and CITY's portions of the total PROJECT cost.

15. Contact person for CITY is:

Larry Van Wey  
City of San Diego  
1010 Second Ave, Suite 800  
San Diego, CA 92101  
(619) 533-3005

## SECTION II

### STATE AGREES:

1. To issue, at no cost to CITY and CITY's contractor and consultants, the necessary encroachment permits for required work within the State highway rights of way.
2. To provide the CITY, prompt reviews and approvals, as appropriate, of submittals by CITY, and to cooperate in the timely processing of PROJECT.
3. STATE's contribution of the PROJECT expense shall be up to 88.53% of eligible PROJECT costs, not to exceed \$1,200,000 in SHOPP TEA funds, as shown on Exhibits A and B.
4. To reimburse CITY, within 60 days of receipt of detailed invoices from CITY, for costs incurred under this Agreement up to STATE's maximum of \$1,200,000, less costs to STATE for fulfilling its oversight responsibilities as described below in Article 5 of this Section II, of SHOPP TEA funds that will be allocated for financing the costs of PROJECT, which figure includes required overhead.
5. STATE will provide oversight and administration of the Preliminary Engineering phase, and STATE's cost shall not to exceed \$30,000. STATE will provide oversight and administration of the Construction phase which cost will not exceed \$20,000. STATE's oversight costs for preliminary engineering and construction will be deducted from the total TEA allocation prior to reimbursement of allowable costs to

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CITY. Refer to Exhibit C- Expenditure Funding Plan, attached to and made a part of this Agreement, and Exhibit B- Local Funding Share Details.

6. Contact person for STATE is:

Stephen Alvarez, Project Manager  
Department of Transportation  
P.O. Box 85406  
San Diego, CA 92186  
(619) 688-2542

### SECTION III

#### IT IS MUTUALLY AGREED:

1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of the resources by the Legislature and the allocation of resources by the California Transportation Commission.
2. Should CITY advertise a contract for PROJECT prior to the allocation of resources by the California Transportation Commission and prior to Federal Highway Administration approval for Federal participation (E-76), there is no guarantee of STATE's and/or Federal participation and CITY shall assume all risks thereof.
3. To withhold the STATE'S cost of oversight of PROJECT. STATE'S cost will not exceed \$30,000 for the Preliminary Engineering Phase and \$20,000 for the Construction Engineering for pedestrian/bike facilities and landscaping phase. The total amount to be withheld by the STATE for cost of project oversight is \$50,000, which will be withheld from the total SHOPP TEA allocation of \$1,200,000 leaving the remainder of \$1,150,000 to be available to the CITY. CITY shall deposit 11.47 % of oversight cost representing the non-federal match to the STATE; \$3,441 for Preliminary Engineering and \$2,994 for Construction Support. Refer to Exhibit C- Expenditure Funding Plan and Exhibit B-Local Funding Share Details.
4. All applicable procedures and policies relating to the use of Federal Funds or STATE gas tax funds shall apply notwithstanding other provisions of this Agreement.

5. Construction of any portion of PROJECT, which requires work within the State highway right of way or affects STATE's facilities, shall not be commenced until an encroachment permit authorizing such work has been issued to CITY by STATE.
6. CITY shall obtain aforesaid encroachment permit through the office of State District Permit Engineer. Receipt by CITY of the approved encroachment permit shall constitute CITY authorization from STATE to proceed with work to be performed by CITY or CITY representatives within the State highway right of way or which affects STATE facilities, pursuant to work covered by this Agreement. CITY authorization to proceed with said work shall be contingent upon CITY's compliance with all provisions set forth in said encroachment permit.
7. CITY's construction contractor shall also be required to obtain an encroachment permit from STATE prior to commencing any work within the State highway right of way or which affect STATE's facilities. The application by CITY's contractor for said encroachment permit shall be made through the office of State District Permit Engineer and shall include proof said contractor has payment and performance surety bonds covering construction of PROJECT.
8. In the construction of said work, said representatives of CITY and STATE will cooperate and consult with each other, and all work within the State highway right of way shall be accomplished to the satisfaction of STATE's representative.
9. If existing public and/or private utilities conflict with the construction of PROJECT, or violate STATE's encroachment policy, CITY shall make all necessary arrangements with the owners of such utilities for their protection, relocation or removal in accordance with CITY's policy and procedure for those facilities. The costs of the protection, relocation, or removal shall be apportioned between the owner of the utility facility and CITY in accordance with STATE's policy and procedure. CITY shall require any utility owner performing relocation work in the State highway right of way to obtain a STATE encroachment permit prior to the performance of said relocation work. The requirements of the most current version of STATE's "Policy on High and Low Risk Underground Facilities Within Highway Rights of Way" shall be fully complied with.
10. Any changes to PROJECT, before, during or after PROJECT acquisition and/or construction, that does not comply with or is in conflict with the TEA program requirements may result in CITY being required to reimburse STATE the entire amount of TEA funds contributed to the project or the value of the TEA fund contribution, based upon the fair market value of the acquisition and/or construction, at the time the conflict and/or non-compliance is determined, whichever is greater.
11. Upon completion of construction of PROJECT, CITY will maintain those portions of PROJECT within CITY property at CITY's cost and expense. Those portions of



PROJECT within the State highway right of way will be covered by a separate Maintenance Agreement defining the terms and conditions.

12. Any hazardous material or contamination of an HM-1 category found within the existing State highway right of way during investigative studies requiring remedy or remedial action, as defined in Division 20, Chapter 6.8 et seq. of the Health and Safety Code, shall be the responsibility of STATE. Any hazardous material or contamination of an HM-1 category found within the local road right of way during investigative studies requiring the same defined remedy or remedial action shall be the responsibility of CITY. For the purpose of this Agreement, hazardous material or contamination of HM-1 category is defined as that level or type of contamination which State or Federal regulatory control agencies having jurisdiction have determined must be remediated by reason of its mere discovery, regardless of whether it is disturbed by PROJECT or not. If CITY decides to not proceed with PROJECT, STATE shall sign the HM-1 manifest and pay all costs for required remedy or remedial action within the existing State highway right of way and CITY shall sign the HM-1 manifest and pay all costs for required remedy or remedial action within the local road right of way. If CITY and STATE decide to proceed with PROJECT, STATE shall sign the HM-1 manifest and pay all costs for required remedy or remedial action within the existing State highway right of way, except that if STATE determines, in its sole judgment that STATE's cost for remedy or remedial action is increased as a result of CITY's decision to proceed with PROJECT, that additional cost identified by STATE shall be deemed a part of the costs of PROJECT. CITY shall sign the HM-1 manifest and pay all costs for required remedy or remedial action within the local road right of way. STATE will exert every effort to fund the remedy or remedial action for which STATE is responsible. In the event STATE is unable to provide funding, CITY will have the option to either delay PROJECT until STATE is able to provide funding or CITY may proceed with the remedy or remedial action at CITY's expense without any subsequent reimbursement by STATE.
13. The remedy or remedial action with respect to any hazardous material or contamination of an HM-2 category found within the existing State highway right of way during investigative studies shall be the responsibility of CITY, at CITY's expense, if CITY decides to proceed with PROJECT. For the purposes of this Agreement, hazardous material or contamination of HM-2 category is defined as that level or type of contamination which said regulatory control agencies would have allowed to remain in place if undisturbed or otherwise protected in place should PROJECT not proceed. CITY shall sign any HM-2 storage manifest if PROJECT proceeds and HM-2 material must be removed in lieu of being treated in place. If CITY decides to not proceed with PROJECT, there will be no obligation to either CITY or STATE other than CITY's duty to cover and protect HM-2 material left in place.
14. If hazardous material or contamination of either HM-1 or HM-2 category is found on new right of way to be acquired by CITY for PROJECT, CITY, as between CITY and STATE only, shall be responsible, at CITY's expense, for all required remedy or

remedial action and/or protection and shall guarantee STATE that said new right of way is clean prior to transfer of title to STATE in accordance with Article 15 of Section I of this Agreement. The generator of the hazardous material or, if none can be identified or found, the present property owner, whether a private entity or a local public agency, or CITY, as a last resort, shall sign the manifest.

15. Nothing in this provisions of this Agreement is intended to create duties or obligations to or rights in third parties to this Agreement or affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the maintenance of State highways different from the standard of care imposed by law.
16. Neither STATE nor any officer thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work or jurisdiction delegated to CITY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, CITY shall fully defend, indemnify and save harmless STATE and all its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by CITY under or in connection with any work or jurisdiction delegated to CITY under this Agreement.
17. Neither CITY nor any officer thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work or jurisdiction delegated to STATE under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, STATE shall fully defend, indemnify and save harmless CITY and all its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by STATE under or in connection with any work or jurisdiction delegated to STATE under this Agreement.
18. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
19. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties to this Agreement or affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the maintenance of State highways different from the standard of care imposed by law.

20. This Agreement shall terminate upon completion of construction of PROJECT and upon final payment to CITY by STATE, pursuant to Section II, Article 4 of this Agreement, or on June 30, 2006, whichever is earlier in time; however, the ownership, maintenance, liability, and claims shall remain in effect until terminated or modified in writing by mutual agreement.

**STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

**CITY OF SAN DIEGO**

JEFF MORALES  
Director of Transportation

By \_\_\_\_\_  
William S. Valle  
District Deputy Director, Design

By \_\_\_\_\_  
City Manager

Approved as to Form and Procedure:

Approved as to Form:

\_\_\_\_\_  
Attorney  
Department of Transportation

\_\_\_\_\_  
CITY Attorney

Certified as to Funds

\_\_\_\_\_  
District Budget Manager

Certified as to Procedure

\_\_\_\_\_  
Accounting Administrator

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(R-2004-771)(COR. COPY)

RESOLUTION NUMBER R- 298852ADOPTED ON FEB 09 2004RESOLUTION OF THE COUNCIL OF THE CITY OF SAN  
DIEGO PERTAINING TO IMPROVEMENTS AT TERALTA  
NEIGHBORHOOD PARK AND PARK DE LA CRUZ.

WHEREAS, improvements such as pedestrian/bicycle paths, interpretive nodes, restrooms and landscaping are needed to Mid-City's Park de la Cruz and Teralta Neighborhood Park, including portions of "History Lane" that parallels Interstate 15 from University Avenue to Teralta Park, located above the freeway between Orange Avenue and Polk Avenue; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That the City Manager is authorized and empowered to take all necessary action to secure the funds on behalf of said City through an agreement with the California Department of Transportation, for construction of improvements at Teralta Neighborhood Park and Park de la Cruz, under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document No. RR- 298852.
2. That the City Auditor and Comptroller is authorized to accept \$1,150,000 in Federal TEA-21 Funds from the California Department of Transportation.
3. That, pending receipt of a fully executed cooperative agreement, a \$630,750 increase in the Fiscal Year 2004 Capital Improvements Program Budget in CIP 29-685.0, Teralta

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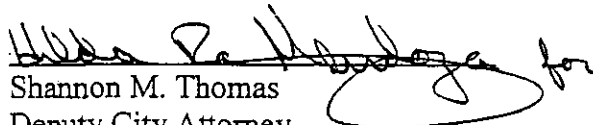
Neighborhood Park – Development, and a \$519,250 increase in CIP 29-684.0, Park de la Cruz, is authorized.

4. That, pending receipt of a fully executed cooperative agreement, the City Auditor and Comptroller is authorized to appropriate and expend an amount not to exceed \$1,150,000 as needed from CIP 29-685.0, Teralta Neighborhood Park – Development, and from CIP 29-684.0, Park de la Cruz.

5. That the City Auditor and Comptroller is authorized to establish a special interest bearing grant fund for the Federal TEA-21 Funds.

APPROVED: CASEY GWINN, City Attorney

By

  
Shannon M. Thomas  
Deputy City Attorney

SMT:cdk  
01/22/04  
01/28/04 COR. COPY  
Or.Dept: Pk. & Rec.  
R-2004-771